IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-796

INTERNATIONAL UNION, UNITED MINE WORKERS, OF AMERICA ET AL., *Petitioners,*

v.

CEDAR COAL COMPANY AND SOUTHERN OHIO COAL COMPANY, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENTS, CEDAR COAL COMPANY AND SOUTHERN OHIO COAL COMPANY, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Respondents Cedar Coal Company and Southern Ohio Coal Company join in the prayer of the petitioners for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in this case on June 6, 1977, but without the self-imposed limitations incorporated in the prayer of the petitioners seeking review of "part" of

the judgment of the United States Court of Appeals for the Fourth Circuit. Respondents urge that the decision of the Fourth Circuit illustrates the absolute necessity for clarification of application of *Buffalo Forge Co.* v. *United Steelworkers of America,* 428 U.S. 397 (1976), to collective bargaining agreements containing implied no-strike contracts, in general, and to the recurring wildcat strikes in the coal industry, in particular.

QUESTION PRESENTED

Respondents do not agree with the petitioners' statement of the question presented. Properly, the question presented is as follows:

> Can a federal district court issue injunctive relief against a local union which is engaged in a strike at a particular work site by refusing to cross the picket line of fellow members of the same international union if the refusal is in support of an illegal strike over an issue which is arbitrable under the single collective bargaining agreement covering both the union members who are picketing and those who refuse to cross the picket line, and the purpose of the picketing and strike is to compel the concession of that arbitrable issue?

STATEMENT OF THE CASE

The work stoppage involved in this case, which idled over 100,000 miners and caused the shutdown of most of the bituminous coal mines in the seven eastern bituminous coal producing states, was precipitated by less than 200 miners at one mine of the respondent Cedar Coal Company located in Kanawha County, West Virginia, approximately 150 miles from the Martinka Mine of respondent Southern Ohio Coal Company.

Respondent Southern Ohio Coal Company (Southern) operates the Martinka Mine in Marion County, West Virginia. Local 1949 of the United Mine Workers of America represents the production and maintenance workers at Martinka. Southern is a signatory to the National Bituminous Coal Wage Agreement of 1974 with the United Mine Workers of America (UMWA), of which Local 1949 and District 31 are members. Respondent Cedar Coal Company (Cedar) is likewise a signatory to the National Bituminous Coal Wage Agreement of 1974 and operates in Boone and Kanawha counties, West Virginia, within the jurisdiction of District 17, and Locals 1759 and 1766, UMWA. Both Cedar and Southern are coal-producing subsidiaries of American Electric Power Company, and both supply coal to its many power-generating plants.

The strike in this case commenced at Cedar Coal Company, at its Local 1759 operation, in early July, 1976. It began, concededly, over a clearly arbitrable issue. Additional issues arose, which were either also clearly arbitrable, or related to actions taken by Cedar in United States District Court to enjoin the original strike in support of the arbitration process. By July 20, 1976, the strike had been spread by pickets to the Cedar operations under the jurisdiction of Local 1766, UMWA.

Cedar sought and obtained a temporary restraining order against Local 1759, but was refused preliminary injunctive relief. When it sought a temporary restraining order against Local 1766, the relief was denied,

and the complaint dismissed for failure to state a claim. Cedar appealed both cases.

The wildcat strike began at Southern's Martinka Mine at 12:01 a.m. on July 26, 1977, when the employees scheduled to work were met at the mine access road by pickets who passed out handbills which read as follows:

> "UMWA STRIKE AGAINST INJUNCTIONS
>
> "UMWA LOCAL UNION 1759, CEDAR COAL COMPANY HAS A FEDERAL INJUNCTION AGAINST THEM. THEY ARE BEING FINED $50,000 AND $25,000 A DAY FOR STRIKING.
>
> "WE ARE SICK AND TIRED OF THE FEDERAL COURTS TAKING THE SIDE OF THE COAL OPERATORS. HUNDREDS OF LOCALS ALL THROUGHOUT THE COAL FIELDS KNOW HOW UNJUST THE USE OF FEDERAL INJUNCTIONS ARE.
>
> "ALL UMWA MINERS ARE ASKED TO STRIKE TO STOP THE INJUNCTIONS AND TO END ALL FINES AND SENTENCES.
>
> "Paid for by UMWA members, combined miners,
>
> Robert Nelson, Chairman"

The Southern employees at Martinka Mine refused to work.

At a hearing conducted as a result of Southern's suit against the UMWA, District 31 and Local 1949 under 29 U.S.C. § 185, seeking injunctive relief and damages, the district court found that the pickets were members of the UMWA but were not members of Local 1949. The district court then concluded that the refusal of the Martinka employees was due to fear or respect for picket lines or for other reasons which were not identified by the court. Denying Southern's motion for a preliminary injunction or, in the alternative, a temporary restraining order, the district court relied upon *Buffalo Forge Co.* v. *United Steelworkers of America,* 428 U.S. 397 (1976).

Southern appealed from the denial of injunctive relief and applied for an injunction pending appeal. This appeal was consolidated with those of Cedar.

The United States Court of Appeals for the Fourth Circuit, relying upon *Buffalo Forge,* sustained the denial to Southern of a preliminary injunction or a temporary restraining order; ordered arbitration under the 1974 Agreement of the issue of whether the Local 1949 might be required to cross the picket line as a condition to proceeding with the damage aspects of the case; and remanded the case to the district court. The Cedar cases were also remanded, with arbitration ordered in the case of Local 1766.

As indicated by the Fourth Circuit's decision, the purpose, intent and effect of the strikes by both Locals 1759 and 1766 was to coerce Cedar to resolve admittedly arbitrable issues. As shown above, that, too, was the clear intent of the pickets whose line the employees of Southern honored. Thus, while, as indicated by the Fourth Circuit, Southern "could concede nothing to Local 1759, . . . and there was no dispute between Southern and Local 1759," [560 F.2d at 1172] the purpose of the picketing there, and thus the effect of the strike by 1759, was to coerce the concession of an admittedly arbitrable issue by Cedar, and, if it arose, by Southern.

The UMWA has petitioned for a writ of certiorari seeking only partial review. Southern Ohio Coal Com-

pany and Cedar Coal Company pray that a writ of certiorari be issued to review the entire decision of the Fourth Circuit.

REASON FOR GRANTING THE WRIT

The Decision Below With Regard to Southern Ohio Coal Company is Contrary to Federal Labor Policy And Was Not Required by Buffalo Forge.

The Court of Appeals concluded, despite the absence of any holding by the district court that the strike by Local 1949 was out of sympathy for Local 1759's situation at Cedar Coal Company, and despite the possibility that the underlying purpose of Local 1949's strike may have been to put pressure upon Cedar to concede an arbitrable issue to Local 1759, eventually benefiting Local 1949, that injunctive relief was not appropriate. The apparent basis for the denial of injunctive relief to Southern is *Buffalo Forge*. However, reliance upon *Buffalo Forge* is inapposite when a factual analysis of the position of Southern vis-à-vis Local 1949 is undertaken.

By its apparent holding that a strike which may have been in sympathy with an illegal strike over an arbitrable dispute under a common labor agreement cannot, as a matter of law, constitute a breach of contract absent an express no-strike clause, the decision of the Court of Appeals not only misinterprets this Court's decision in *Buffalo Forge,* but also significantly and adversely affects the basic national policy favoring peaceful resolution of industrial disputes as a substitute for economic strife. Further, the decision exposes an entire industry and its employees to the whims of a few dissident employees.

In *Buffalo Forge,* this Court held that notwithstanding the arguable illegality of a strike in sympathy with a concededly legal primary strike to secure a labor agreement, such a sympathy strike was not enjoinable in federal court pending arbitration of its legality under a labor agreement containing an express no-strike clause. The Court concluded that the accommodation of policy favoring arbitration to the anti-injunction provisions of Norris-LaGuardia, as articulated in *Boys Markets* v. *Retail Clerks Union,* 398 U.S. 235 (1970), limited the jurisdiction of federal courts to issue injunctions to those cases where the arbitral process was jeopardized. Vindication of the arbitral process by an injunction pending arbitration was therefore unnecessary in *Buffalo Forge,* where the union offered to arbitrate the legality of the strike, since the purpose of the strike was not to coerce the settlement of a arbitrable issue, but instead to coerce settlement of an admittedly unarbitrable one. That strike was termed a "sympathy" strike, *i.e.,* not one which sought to coerce the settlement of an arbitrable issue or deprive the employer of its bargain.

The walkout by Local 1949 was not, however, a "sympathy" strike within the application of *Buffalo Forge.* Substantnal factual differences between the Martinka walkout and the *Buffalo Forge* strike exist. Succinctly stated, these differences are as follows:

> A. At Buffalo Forge Company, there was a legal primary strike, plus a strike in admitted sympathy with the goals of that legal primary strike. However, the stranger picket line at Martinka was the result of an illegal strike over an arbitrable dispute at Cedar Coal Company.

B. Two distinct labor contracts and bargaining units were involved in *Buffalo Forge,* whereas one labor contract, the National Bituminous Coal Wage Agreement of 1974, applied to both locals at Cedar, as well as Local 1949 at Southern's Martinka Mine.

C. The National Coal Wage Agreement of 1974 contained both a broad arbitration provision and the union's promise to maintain the integrity of the contract by complete reliance upon arbitration for settlement of all disputes. Such language was not contained in the agreement between Buffalo Forge Company and the Union.

D. In *Buffalo Forge,* the sympathy strikers had no direct or beneficial interest in the outcome of the primary strike; but at Martinka Mine the Local 1949 strikers stood to benefit by extending and supporting the illegal primary strike, as is illustrated by the fact that the stranger pickets' handbills advised of the federal injunction against Cedar Coal Local 1759 and asked for "ALL UMWA MINERS . . . TO STRIKE TO STOP THE INJUNCTIONS AND TO END ALL FINES AND SENTENCES."

E. Most importantly, in *Buffalo Forge* one employer with separate labor contracts distinct from those within its industry was struck. However, Martinka Mine was but one mine of many, all with the same labor agreement, struck throughout the eastern coal fields in an effort to coerce a party to that agreement (Cedar) to concede an arbitrable existing dispute which is equally arbitrable to all such employers, including Southern, with a consequent like effect on all employers signatory to that agreement.

These factual differences, when coupled with the mandate of the Labor-Management Relations Act of 1947 requiring settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement by the method agreed upon by the parties, take the Martinka dispute out of the ambit of *Buffalo Forge.* The petitioners, as signatories to the National Bituminous Coal Wage Agreement of 1974, bound themselves to arbitrate all issues between such signatories.

Furthermore, from the record it seems clear that the Local 1949 strikers were not out in "sympathy" with the Cedar Coal locals. Southern is a member of a multi-employer bargaining unit. *United Mine Workers,* 179 NLRB 479, 72 LRRM 1426 (1969). There is but one national agreement, and that agreement contains an arbitration procedure designed to assure uniformity in interpretation and application. All members of the union employed by signatories to the agreement, including Cedar and Southern, are obligated to abide by the same contractual grievance-arbitration procedures of the one agreement extant between the parties. Under those circumstances, whenever, as here, any local of the union initiates a strike over an interpretation or application of the national agreement, and other locals of the same union refuse to work to support the initial strikers' demand, all of them are striking over a dispute in which they have a common interest, and with a common intent to will a common result to that dispute. Hence, this was no sympathy strike, for as noted by Justice Stevens in the dissent to *Buffalo Forge,* a sympathy strike "does not directly further the economic interests of the members of the striking local or contribute to the resolution of any dispute between that local, or its members, and the employer." [428 U.S. at 429].

Although the UMWA, its attorneys, and a number of federal district judges have construed *Buffalo Forge* as effectively overruling *Boys Markets, Inc.* v. *Retail Clerks Local* 770, 395 U.S. 235 (1970), rendering it inapplicable to "stranger picketing" in the coal industry even when that picketing is over arbitrable issues, respondents believe that the Court, upon examination and comparison of the situation presented in this case, will conclude that *Boys Markets* is still applicable and available as a remedy against wildcat strikes in the coal industry. There are significant and controlling differences between the sympathy strike which this Court held unenjoinable in *Buffalo Forge* and the widespread wildcat strikes in the coal industry where picketing is undertaken over clearly arbitrable issues. *Buffalo Forge* cannot continue to be interpreted in the coal fields as a bar to federal injunctive relief and a license to dissident UMWA members to strike over clearly arbitrable disputes.

CONCLUSION

As a result of the Fourth Circuit's erroneous application of *Buffalo Forge* in the decision below and similar holdings by the Third, Sixth and Seventh Circuits, respectively, in *United States Steel Corp.* v. *United Mine Workers,* 548 F.2d 67 (3rd Cir. 1976), *Southern Ohio Coal Co.* v. *United Mine Workers of America,* 551 F.2d 695 (6th Cir. 1977), and *Ziegler Coal Co.* v. *Local Union No. 1870, United Mine Workers of America,* —— F.2d ——, 96 LRRM 3360 (7th Cir. 1977), the contractual grievance and arbitration machinery has become a nullity for employers in the coal industry. These employers continue to have their mines shut down by roving, unidentified pickets who travel

throughout the coal-producing states precipitating frequent and protracted strikes over issues which properly should be settled by arbitration. Yet no judicial relief has been available to these employers because of the seeming reluctance of the federal court system to properly apply *Buffalo Forge* to the wildcat strikes of the coal industry. As a consequence, coal production has been significantly reduced, with consequent economic devastation not only to the coal industry, but also to the union, the families of the miners and the miners' and pensioners' and widows' pension and health funds.

The applicability of *Buffalo Forge* to wildcat strikes in the bituminous coal industry is thus of paramount importance to the industry, the union and an energy-conscious nation. Clarification of the issue is appropriate and necessary. Certiorari for that purpose should be granted.

Respectfully submitted,

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